

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)	Examiner: Gilbert, W. V.
)	
Stackenwalt et al.)	Art Unit: 3635
)	
Serial No.: 10/774,234)	Confirmation No.: 6188
)	
Filed: February 5, 2004)	Customer No.: 00112
)	
For: CANOPY-LIKE)	Docket No.: 0112
DECORATIVE STRUCTURE)	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Brief is submitted in triplicate pursuant to 37 CFR 1.192 in support of the Notice of Appeal filed in the above-identified application.

TABLE OF CONTENTS

Real Party in Interest	3
Related Appeals and Interferences	4
Status of Claims	5
Status of Amendments	6
Summary of Claimed Subject Matter	7
Grounds of Rejection to be Reviewed on Appeal	8
Argument	9
Claims Appendix	13
Evidence Appendix	15
Related Proceedings Appendix	16

REAL PARTY IN INTEREST

The real party in interest in this application is Armstrong World Industries, Inc., the assignee of the present application.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, or Appellants' legal representatives, which will: directly affect; be directly affected by; or have a bearing on the Board's decision in the pending Appeal.

STATUS OF CLAIMS

Claims 3, 8, 9 and 11-16 have been cancelled.

Claims 1, 2, 4-7 and 10 are pending in the application, are under rejection and are hereby appealed.

STATUS OF AMENDMENTS

There were no amendments filed subsequent to final rejection in this application.

Therefore, the claims are as they appear in Appellants' Amendment of August 20, 2007.

SUMMARY OF CLAIMED SUBJECT MATTER

The subject matter of independent claim 1 is a suspended decorative structure comprising: a panel (20) (paragraph [0027]) having opposed edges (22, 24) (paragraph [0027]); first and second biasing members (50a, 50b respectively) (paragraph [0027]) cooperating with the opposed edges of the panel; a first cable (34) (paragraph [0027]) attached to the first biasing member at a first end of the first cable and the second biasing member at a second end of the first cable (paragraph [0027]) (Figures 1, 2, 10, 12 and 13), wherein the first cable cooperates with the first and second biasing members to maintain the panel in a flexed configuration (paragraph [0027]) (Figures 1, 2, 10, 12 and 13); a second cable (30) attached to the first biasing member at a first end of the second cable and to a wall or an overhead ceiling at a second end of the second cable (paragraph [0027]); and a third cable (30) attached the second biasing member at a first end of the third cable and to a wall or an overhead ceiling at a second end of the third cable (paragraph [0027]).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 2, 4-7 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,622,197 to Valaire.

ARGUMENT

Attorney for Appellants will argue the patentability of independent claim 1 and the remaining dependent claims will stand or fall with claim 1 from which they depend.

Rejections under 35 U.S.C. § 103(a)

Claim 1:

By way of background, Valaire describes an adjustable canopy. As described in column 1, lines 51-59, the canopy is comprised of: a fabric with a plurality of anchor points on its periphery; a pair of supports adapted to suspend the fabric above the ground; and a furling means extending along the fabric between the pair of supports. The fabric is connected to the ground or to posts by tethers extending from the anchor points. Appellants submit that the key to Valaire's invention is that the fabric is adapted to be simultaneously unfurled from both sides of the furling means in order to avoid the disadvantages associated with the conventional technique of rolling up the fabric along one edge.

On page 3 of the Final Official Action of November 15, 2007 ("the Final Official Action"), the PTO asserts that

Valaire discloses a suspended decorative structure comprising a panel (20) . . . , a first cable (42) attached to the first biasing member at a first end of the cable and the second member at a second end of the first cable, the first cable cooperates with the first and second biasing members to maintains the panel in a flexed configuration. (Emphasis Added).

Appellants respectfully disagree with the PTO's assertion that item 42 of Valaire is a cable which cooperates with the biasing members to "maintain the panel in a flexed configuration" as required by independent claim 1.

More specifically, as described in column 3, beginning at line 15, Valaire's item 42 is a "furling cable" which along with the "furling reel" (41) and "swivel" (43) forms the "furling means" (40) which extends along the diagonal of the "canopy fabric" (20). Valaire's furling cable (42) transfers the rotational movement of the furling reel (41) to the swivel (43). The rotational connection at either end allows the furling cable 42 to rotate evenly along its length and effect "even" furling and unfurling along the diagonal of the canopy fabric. Valaire states in column 2, lines 25-33:

According to this aspect of the present invention, the tension in the furling cable may be adjusted. In this way, the furling cable may be tensioned to provide a relatively straight furling means, thereby facilitating furling of the canopy fabric, yet when required the furling cable may be relaxed to conform to whatever curved shape is formed by the canopy fabric. Further, having such a flexible furling means allows the canopy to be any desired shape, since it is not limited or defined by the shape of the furling apparatus. (Emphasis Added).

Appellants respectfully submit that this statement clearly teaches away from Applicants' claimed invention as Valaire's furling apparatus (40), which includes furling cable (42), does not limit, define and/or "maintain" the shape of the panel. In contrast, claim 1 requires the first cable to cooperate with the biasing members to "maintain the panel in a flexed configuration."

In addition, Appellants submit that Valaire's canopy fabric (element 20) is clearly not a panel as required by claim 1. In fact, Appellants assert that Valaire actually teaches away from the use of a "panel." More specifically, in column 7, beginning at line 5, Valaire states:

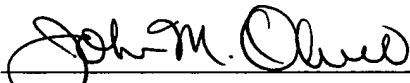
The inventive canopy has no rigid structure within the canopy fabric and consequently is very light, allowing construction of a very large canopy without the need for large support structures or scaffolding. . . . Conventional permanent or collapsible assemblies usually comprise a series of flat panels connected by appropriate framework. These flat panels are quite susceptible to wind gusts and normally require extensive framework or scaffolding. . . . The light curved structure of the inventive canopy assembly resists wind gusts and can span across large areas without the need for intermediate support structures under the canopy fabric. The plurality of anchor points and tensioning cables ensures that the canopy is stable and strong with the curved shape providing good run off of debris and water etc, as well as being aesthetically pleasing.

At no point in the description does Valaire refer to the canopy fabric as a “panel” and, in fact, as described in the above paragraph, Valaire specifically distinguishes his canopy fabric from conventional assemblies comprising a series of flat “panels.” It is further implied that Valaire’s canopy, as opposed to a conventional “panel”, has “no rigid structure within the canopy fabric”. The fabric is merely pulled taut by the plurality of anchor points and cables. Appellants respectfully conclude that Valaire’s canopy fabric (element 20) is clearly not a panel as required by claim 1.

For the reasons set forth above, the rejections under 35 U.S.C. §103(a), should be withdrawn and claims 1, 2, 4-7 and 10 should be found allowable. Appellants request reversal of each of the above rejections and allowance of the application.

Respectfully submitted,

4/21/08
Date



John M. Olivo
Registration No. 51,004
Attorney for Appellants

CLAIMS APPENDIX

Pending Claims

1. A suspended decorative structure comprising:
a panel having opposed edges;
first and second biasing members cooperating with the opposed edges of the panel;
a first cable attached to the first biasing member at a first end of the first cable and the second biasing member at a second end of the first cable, wherein the first cable cooperates with the first and second biasing members to maintain the panel in a flexed configuration;
a second cable attached to the first biasing member at a first end of the second cable and to a wall or an overhead ceiling at a second end of the second cable; and
a third cable attached the second biasing member at a first end of the third cable and to a wall or an overhead ceiling at a second end of the third cable.
2. The suspended decorative structure of claim 1, wherein each of the first and second biasing members include a body having a groove for receiving one of the opposed edges of the panel.
4. The suspended decorative structure of claim 1, wherein each of the first and second biasing members comprises a cam cooperating with the panel.

5. The suspended decorative structure of claim 1, wherein each of the first and second biasing members comprises a jaw cooperating with the panel.

6. The suspended decorative structure of claim 5, wherein the jaw is pivotable about a pivot joint.

7. The suspended decorative structure of claim 1, wherein the panel is formed of a material selected from metal, wood, fabric, and plastic.

10. The suspended decorative structure of claim 1, wherein the first cable is tensioned by the panel.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None